

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

VANCE S. ELLIOTT,

No. C 08-02352 SBA

Plaintiff,

## and Related Cases:

V.

No. C 07-04446 SBA  
No. C 06-04842 SBA

SAN FRANCISCO RESIDENTIAL  
RENT STABILIZATION and  
ARBITRATION BOARD.

## ORDER

Defendant.

[Docket No. 26]

## INTRODUCTION

Before the Court is defendant's Renewed Motion to Dismiss for Lack of Standing [Docket No. 26]. For the following reasons, plaintiff Vance S. Elliott has until seven days from the date of the entry of this Order to file an opposition to defendant's Renewed Motion to Dismiss for Lack of Standing [Docket No. 26] or the Court will ***dismiss this matter with prejudice***.

## BACKGROUND

## I. Related Cases 06-04842, 07-04446, and 07-801666

On August 4, 2006, pro se plaintiff Vance E. Elliott filed suit against defendant San Francisco Residential Rent Stabilization and Arbitration Board (the “Board”). *See* Docket No. 1 in case C 06-04842 SBA (“4842”). He claimed the Board’s Uniform Visitor Policy violated the Fourteenth Amendment by circumscribing visitors to single resident only (SRO) residences to between the hours of 9:00 a.m. and 9:00 p.m. Docket No. 6 in 4842 at 2. The Board answered on December 5, 2006. *See* Docket No. 10 in 4842. Elliott filed three more amended complaints. *See* Docket entries for 1/17/2007, 1/18/2007, 2/27/2007, all in 4842. On April 4, 2007, the Court ordered the parties to hold a settlement conference between January 9 and 18, 2008. *See* Docket No. 20 in 4842. On April 6, 2007, the Court referred this matter to Magistrate Judge Brazil for settlement purposes. *See* Docket entry for 4/6/07 in 4842.

28 On June 26, 2007, Elliott filed another complaint against the Board, in case MC-07-80166

1 (“80166”), which was assigned to Judge Vaughn R. Walker. *See* Docket No. 1 in 80166. Elliott  
 2 raised the same allegations in this complaint which he had raised in case 4842. *See id.* On  
 3 August 28, 2007, case 80166 was redesignated as case C-07-04446 MJJ (“4446”) and assigned to  
 4 Judge Martin J. Jenkins. *See* Docket No. 1 in 4446, Docket entry for 8/28/2007 in 80166. On  
 5 October 3, 2007, on the Board’s motion [Docket No. 25 in 4842], the Court related case 4842 to case  
 6 4446. *See* Docket No. 28 in 4842, Docket No. 8 in 4446. On November 29, 2007, the Board filed a  
 7 motion to dismiss for lack of standing, *see* Docket No. 35 in 4842, and a motion to consolidate, *see*  
 8 Docket No. 39 in 4842. On December 5, 2007, the Court set hearings for these motions for  
 9 February 26, 2008. *See* Docket No. 41 in 4842. On December 10, 2007, Elliott filed an amended  
 10 complaint in case 4446. *See* Docket entry for 12/10/2007 in 4446.

11       On January 18, 2008, Magistrate Judge Brazil set an OSC hearing for February 15, 2008,  
 12 regarding sanctions for Elliott’s failure to appear at a settlement conference. *See* Docket No. 42 in  
 13 4842. Elliott failed to appear at the OSC hearing, and on February 20, 2008, Magistrate Judge  
 14 Brazil issued a report and recommended the Court dismiss Elliott’s cases for failure to prosecute.  
 15 *See* Docket No. 46 in 4842.

16       As of February 26, 2008, Elliott had not filed any opposition to the Board’s motion to  
 17 dismiss. *See* Docket No. 47 in 4842. The Court thus vacated the hearing on the motion, and set an  
 18 OSC hearing regarding dismissal for failure to prosecute for March 13, 2008. *See id.* Both parties  
 19 appeared at the March 13, 2008 hearing. *See* Docket No. 49 in 4842. The Court consolidated cases  
 20 4842 and 4446. *See id.* Elliott said he failed to appear at his settlement conference because he  
 21 wanted a jury trial, and believed participating in the former would prevent the latter. *See* Docket  
 22 No. 50 in 4842. He also requested a chance to oppose the Board’s motion to dismiss. *See id.* The  
 23 Court set a briefing schedule, with his opposition due on March 26, 2008. *See id.* Elliott did not file  
 24 an opposition, and on April 1, 2008, the Court dismissed case 4842 without prejudice, for failure to  
 25 prosecute. *See id.* On June 4, 2008, the Court denied Elliott’s motion to reconsider under Federal  
 26 Rule of Civil Procedure 59. *See* Docket No. 52 in 4842.

27 **II. This Case, 08-02352 SBA**

28       On May 7, 2008, Elliott filed a complaint against the Board in this matter, alleging the

1 “Uniform Visitor Policy enforced upon the tenants of so-called SRO hotels in the SOMA and  
 2 Tenderlion [sic] districts of this City and County of San Francisco is in violation of the 14th  
 3 Amendment . . . .” Docket No. 1 (Compl.) at 2 ¶ 2. This same day, he also filed an application to  
 4 proceed *in forma pauperis*. *See* Docket No. 2. This matter was assigned to Magistrate Judge Chen,  
 5 who on June 16, 2008 granted Elliott *in forma pauperis* status. *See* Docket No. 5. On June 18,  
 6 2008, this Court related this matter to cases 4842 and 4446. *See* Docket No. 7.

7 On July 30, 2008, Elliott filed a Motion for Summary Judgment, captioned *only* for  
 8 case 4446. *See* Docket No. 25 in 4446. On August 4, 2008, defendant filed a Motion to Dismiss for  
 9 Lack of Jurisdiction [Docket No. 11]. On August 18, 2006, Elliott filed a Motion to Dismiss with  
 10 Leave to Amend [Docket No. 15]. Then, on August 22, 2008, he filed an Amendment to Motion to  
 11 Dismiss with Leave to Amend *only* in case 4842. *See* Docket No. 56 in 4842.

12 On September 3, 2009 the Court disposed of these pleadings. The Court denied Elliott’s  
 13 Motion for Summary Judgement, because it consisted of a four-page application to proceed *in forma*  
 14 *pauperis* and seven pages of largely illegible text, and because case 4446 was closed. *See* Docket  
 15 No. 17 at 6. The Court granted defendant’s Motion to Dismiss for Lack of Jurisdiction, filed on the  
 16 grounds that Elliott had failed to plead standing to sue. *See id.* The Court held that Elliott had failed  
 17 to plead *any* claim for relief in his complaint, thus failing to meet his burden to demonstrate  
 18 standing. *See id.* Nonetheless, because this defect was curable, the Court gave him 20 days leave to  
 19 amend. *See id.* at 6-7. The Court then denied as moot Elliott’s Motion to Dismiss with Leave to  
 20 Amend, as it was actually his opposition to defendant’s motion. *See id.* at 7. As for Elliot’s  
 21 Amendment to Motion to Dismiss with Leave to Amend, the Court admonished Elliot not to file  
 22 pleadings in his closed cases. *See id.* Finally, Elliott had declined to meet at defendant’s counsel’s  
 23 office, stating in a letter that she would use it the way a prostitute allegedly uses her brothel’s  
 24 surroundings to control her customers. *See id.* The Court ordered Elliott to prosecute his matter  
 25 with a decorum appropriate for litigation in the federal courts, or risk sanctions or dismissal. *See id.*  
 26 at 7-8.

27 On October 28, 2008, Elliott filed a First Amended Complaint. *See* Docket No. 19. On  
 28 November 18, 2008, defendant filed the Renewed Motion to Dismiss for Lack of Standing [Docket

1 No. 26] before this Court. The motion was set for hearing on February 24, 2009. Under Civil Local  
2 Rule 7-3(a), Elliott's opposition, if any was due on February 3, 2009. As of the date of this Order,  
3 Elliott has not filed any opposition. The Court's Standing Order for Civil Cases warns that "[t]he  
4 failure of the opposing party to file a memorandum of points and authorities in opposition to any  
5 motion shall constitute a consent to the granting of the motion."

6 **CONCLUSION**

7 Accordingly, it is ORDERED that the hearing on defendant's Renewed Motion to Dismiss  
8 for Lack of Standing [Docket No. 26], set for February 24, 2009, at 1:00 p.m., in Courtroom 3 of the  
9 United States Courthouse, 1301 Clay Street, Oakland, California 94612, is VACATED. Plaintiff  
10 Vance S. Elliott has until seven days from the date of the entry of this Order on the docket to file an  
11 opposition to defendant's Renewed Motion to Dismiss for Lack of Standing. Defendant shall file  
12 any reply within ten days from the date of the entry of this Order on the docket. **If Elliott fails to**  
13 **file an opposition as required by this Order, the Court will dismiss this matter with prejudice**  
14 **for failure to prosecute and for failing to oppose defendant's motion. Elliott is warned that if**  
15 **this matter is dismissed with prejudice, he will not be able to file any pleadings related to any**  
16 **allegations giving rise to this matter, neither in this matter nor in any other matter.**

17

18 IT IS SO ORDERED.

19

20 February 17, 2009

21   
22 Saundra Brown Armstrong  
23 United States District Judge

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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 ELLIOTT et al,  
5 Plaintiff,  
6 v.  
7 SAN FRANCISCO RENT STABILIZATION  
8 AND ARBITRATION B et al,  
9 Defendant.

Case Number: CV08-02352 SBA

**CERTIFICATE OF SERVICE**

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
Court, Northern District of California.

11 That on February 18, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
located in the Clerk's office.

14  
15  
16 Vance S. Elliott  
17 74 Sixth Street, #226  
San Francisco, CA 94103-1608

18 Dated: February 18, 2009

19 Richard W. Wiking, Clerk  
By: LISA R CLARK, Deputy Clerk

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